

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3819 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ALKABEN ABHAYKUMAR SHUKLA

Versus

STATE OF GUJARAT

Appearance:

MR HASHIM QURESHI for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 02/11/96

ORAL JUDGEMENT

Rule.

The petitioners- Alkaben Abhaykumar Shukla and Sanjay Ganshyambhai Gajjar are arrested by the Kagdapith Police Station, Ahmedabad in connection with the FIR No. 1342/96 registered with the Kagdapith Police Station for the offence registered under sections 420, 365, 368, 114

IPC. When the present petitioners were arrested by the police on 23.8.96 and when produced before the learned Magistrate and their police custody was sought for the learned Magistrate passed an order on the same day i.e. 23.8.96 remanding them to police custody on 25.8.96. Present application is filed against the said order.

2. As per the case of the complainant, the complainant had approached one Ganshyambhai Gajjar for getting Rs. 5 lacs. According to him a receipt for the payment of the said amount was obtained from him on a stamp paper and thereafter a bag was handed over to him by saying that said bag was containing Rs. 4 lacs at the Ahmedabad Railway Station and when he was trying to open the said bag to verify the contents therein, he was prevented by saying that he should not open the bag as the persons who are present on the platform will see the contents of the bag and then he boarded the train and after the train started, he opened the said bag and thereafter he found that in the said bag there were only post card and some papers and there was no cash. He immediately got down at Maninagar Railway Station and then he tried to contact Ganshyambhai at his residence but he was not present on the first call. But subsequently he came to meet the complainant and promised him to pay the amount with a request not to lodge any complaint. But as he did not pay the amount to the complainant, he lodged a complaint on 3.8.96 about the incident of 26.7.96.

3. As per the FIR applicant Alkaben is not connected with the alleged incident. She was merely present there when the bag was handed over to the complainant and the complainant does not say in his complaint that he had delivered any bag either by handing over of the said bag or settled the transaction in question. In view of this, petitioner no.1 Alkaben need not be remanded to police custody because nothing to show that she cheated the complainant and the complainant himself does not allege anything against her.

4. As regards the petitioner no.2 Sanjay Gajjar he is the son of main accused Ganshyam Gajjar. No doubt he has handed over the said bag to the complainant but as per his claim the complainant, a receipt of Rs. 4 lacs was obtained from him on a stamp paper in advance and he was not paid the amount. Said stamp receipt is already recovered. Therefore, in the circumstances it could not be said that presence of the petitioner no.2 is necessary

for proper further investigation of the incident. As per the case of the complainant the cheating case was registered on account of non payment of Rs. 4 lacs inspite of obtaining a receipt of stamp paper for the said amount of Rs. 4 lacs. Said advance receipt has already recovered and consequently there is no question of recovering anything else for the offence in question. There is no question of recovering any amount because as per the FIR the offence has taken place on account of non payment of the amount and obtained a valid receipt for the payment of the said amount. In the circumstances I allow this petition and quash and set aside the order of remand of police custody granted by the learned Magistrate on 23.8.96 in Cri. Case 1342/96. Rule is made absolute.

(S.D.Pandit.J)